IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 14TH DECEMBER 2007 / 23RD AGRAHAYANA 1929

C.R.P.No. 318 of 2004(G)

(*OS.358/1996 of MUNSIFF COURT,KAYAMKULAM)*

REVN. PETITIONER/DEFENDANT:

VIJAYAMMA,
KRISHNA BHAVANAM, KARUVATTAMKUZHY MURI,
KEERIKKAD VILLAGE.

BY ADV. SRI.GEORGE VARGHESE (PERUMPALLIKUTTIYIL)

RESPONDENT/PLAINTIFF:

VASANTHIYAMMA RAJALEKSHMI,
MOHANALAYAM, MUTTAMPEROOR MURI, MANNAR VILLAGE
FROM VADAKKENCHENKILATHU VEETTIL, MUTHUKULAM
SOUTH VILLAGE, MUTHUKULAMTHEKKUM MURI.

BY ADV. SRI.K.HARILAL

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 14/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.R.P.NO. 318 OF 2004

ORDER ON I.A.NO.903 OF 2004 IN C.R.P.NO. 318 OF 2004

DISMISSED.

14.12.2007 SD/- K.T. SANKARAN, JUDGE.

/TRUE COPY/

P.A. TO JUDGE.

K.T. SANKARAN, J.

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C.R.P. No. 318 OF 2004

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Dated this the 14th December, 2007

O R D E R

The defendant in O.S.NO. 358 of 1996 on the file of the court of the Munsiff, Kayamkulam has filed this Civil Revision Petition, challenging the judgment of the court below. The suit was filed by the respondent herein under section 6 of the Specific Relief Act. Before the court below, both parties adduced oral and documentary evidence. Exts. A1 to A12 and Exts. B1 to B7 are the documents produced. On the side of the plaintiff, P.Ws. 1 to 7 were examined and on the side of the defendant, D.Ws. 1 and 2 were examined. A commissioner was appointed. His report was marked as Ext.C1(a) and the sketch was marked as Ext.C2. Ext.X1 was marked after production of the same on summons. After considering the voluminous documents produced and the oral evidence adduced in the case, the court below came to the conclusion that the plaintiff was in possession of the suit property and that she was dispossessed by the defendant as alleged by the plaintiff and accordingly the suit was decreed.

2. The case of the plaintiff is that she was in possession of the plaint A schedule property having an extent of 31.650 cents . She has title to the property under a settlement deed and an exchange deed. The extent, as per the documents would come to 29 cents. The plaintiff also says that she has perfected her title by adverse possession in respect of the remaining extent of land and thus she was in possession of 31.650 cents .

3. The defendant's property is situated on the eastern and northern side of the plaintiff's property. The defendant claims title to her property having an extent of 23 cents. The case of dispossession of the plaintiff was denied by the defendant. According to her, when she was ill , the re-survey records were got prepared at the instance of the plaintiff in such a way , so that she could claim possession in respect of 31.650 cents.

4. The trial court considered the oral and documentary evidence in the judgment which runs to 34 pages. P.W1, the Sub Inspector of Police was examined to show that a few days before the alleged date of dispossession, a complaint was filed by the plaintiff against the defendant stating that the defendant attempted to dispossess the plaintiff. According to the plaintiff, the defendant was called to the police station and she was warned. This is denied by the defendant . The evidence of P.W.1 would indicate that the case put forward by the plaintiff is probable. P.W.2 is the husband of the plaintiff. He stated that on getting information that the defendant was trespassing upon the property, he went to the spot and saw the incident. P.W.4 is a coconut climber, who use to work for the plaintiff as well as for the defendant. He stated that the defendant committed trespass upon the property. P.W.5 is an independent witness . He also stated about the mischief committed by the defendant. The court below relied on the evidence of P.Ws. 2, 4 and 5 and held that the plaintiff has proved that the defendant has encroached upon the property in question. The court below came to the conclusion that the plaint B schedule property, which, according to the plaintiff, forms part of A schedule property, was encroached upon by the defendant and that the

previous possession of plaintiff in respect of plaint B schedule property is proved by overwhelming evidence. It was also found, on appreciation of evidence, that the plaintiff was dispossessed from the plaint B schedule property by the defendant and her men.

5. Against the decision of the trial court in a suit under section 6 of the Specific Relief Act , the scope of interference in Revision by the High Court is very limited. The Supreme Court has held in ***Sanjay Kumar Pandey and others vs. Gulbahar Sheikh and others*** **[(2004) 4 Supreme Court Cases 664]** thus:

> *"A suit under Section 6 of the Act is often called a summary suit inasmuch as the enquiry in the suit under Section 6 is confined to finding out the possession and dispossession within a period of six months from the date of the institution of the suit ignoring the question of title. Sub-section (3) of Section 6 provides that no appeal shall lie from any order or decree passed in any suit instituted under this section. No review of any such order or decree is permitted. The remedy of a person unsuccessful in a suit under Section 6 of the Act is to file a regular suit establishing his title to the suit property and in the event of his succeeding he will be entitled to recover possession of the property notwithstanding the adverse decision under Section 6 of the Act. Thus, as against a decision under Section 6 of the Act, the remedy of unsuccessful party is to file a suit based on title. The remedy of filing a revision is available but that is only by way of an exception; for the High Court would not interfere with a decree or order under Section 6 of the Act except on a case for interference being made out within the well-settled parameters of the exercise of revisional jurisdiction under Section 115 of the Code. "*

On a consideration of the pleadings, facts and circumstances of the case and the evidence on record, I am of the view that there is no scope for interference in this revision. The Civil Revision Petition lacks merit and it is accordingly dismissed. No order as to costs.

K.T. SANKARAN,
JUDGE.

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